

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

In the matter of the Petition of the Treasurer of the County of Oakland, Michigan,  
for the foreclosure of certain lands for unpaid property taxes.

Case No. 2016-153362-CZ  
Hon. Hala Jarbou

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**OPINION AND ORDER**

This matter is before the Court on Special Fiduciary Joseph H. Ehrlich's Motion to Set Aside Order Entered by the Court on February 8, 2017. The Court heard oral argument and took the motion under advisement. As more fully set forth below, the Court denies the motion. In making this determination, the Court has carefully reviewed the parties' briefs and considered all of their arguments and cited law.

The motion before the Court arises out of the foreclosure of real property located at 2934 N. Vermont Avenue, Royal Oak, Michigan ("Property"). The Property was owned by Ruth D'Angelo ("D'Angelo"). On October 14, 2005, D'Angelo died while residing at the Property. Attorney H. Ehrlich has been appointed by the Probate Court as Special Fiduciary for the Estate of D'Angelo. The Special Fiduciary is the moving party in the instant motion and hereinafter will be referenced as the "Estate."

The Estate seeks to set aside the Judgment of Foreclosure ("Judgment") entered on February 8, 2017 as to the Property. Based on what has been presented, the issues raised in the motion pertain to notice and jurisdiction. The Court first addresses the issue of notice.

Property tax foreclosures are governed by the General Property Tax Act, MCL 211.1 *et seq* ("GPTA"). "If a property owner does not redeem the property or appeal the judgment of foreclosure within 21 days, MCL 211.78k(6) deprives the circuit court of jurisdiction to alter the judgment of foreclosure." *In re Treasurer of Wayne Co for Foreclosure*, 478 Mich 1, 8 (2007). The only exception would be if the property owner did not receive "constitutionally adequate notice" of the foreclosure. *Id.* at 10-11. Every property owner has a constitutional right to due process of law in proceedings for tax foreclosure. US Const, Am V and XIV; Const 1963, art I, § 17; *Sidun v Wayne Co Treasurer*, 481 Mich 503, 509 (2008). "People must pay their taxes, and the government may hold citizens accountable for tax delinquency by taking their property. But before forcing a citizen to satisfy his debt by forfeiting his property, due process requires the government to provide adequate notice of the impending taking." *Jones v Flowers*, 547 US 220, 234 (2006). The proceedings that seek to take property from its owner must comport with due process. *Sidun, supra*. "The notice provisions of the GPTA seek to fulfill [the] obligation" of affording due process to property owners before depriving them of their property. *Id.* at 512. Where the foreclosing governmental unit complies with the statutory notice requirements, due process is satisfied. *Treasurer of Wayne Co, supra* at 10 n 19. Even partial compliance may satisfy due process "[b]ecause the notice provisions provide more notice than is required to satisfy due process..." *Id.* A person shall be deemed to have been provided notice and an opportunity to be heard, if the foreclosing governmental unit follows the statutory procedures for provision of notice by mail, for visits to forfeited property, and for publication. *Id.*



Here, the record shows that on June 1, 2015, a Notice of Property Tax Delinquency was sent via first class mail to Ruth D' Angelo, Janice D'Angelo and the Michigan Department of Treasury pursuant to MCL 211.78b. (Treasurer's Exhibit A). On September 1, 2005, a copy of the Notice of Property Tax Delinquency was sent to the same individuals pursuant to MCL 211.78c. (Treasurer's Exhibit B). A copy of the Notice of Property Tax Forfeiture was sent to the same individuals via certified mail, return receipt requested in February, 2016 pursuant to MCL 211.78f, together with the signed return receipts. (Treasurer's Exhibit C).

The record shows that in June, 2016, the Treasurer conducted a title search for the Property to identify all interest holders pursuant to MCL 211.78i(1). (Treasurer's Exhibit D). The title search listed Ruth D'Angelo as the record owner of the Property and disclosed Janice D'Angelo and Jacquelyn D'Angelo as additional interested parties. (Treasurer's Exhibit D). Therefore, the Estate of Ruth D'Angelo nor successor Personal Representative Barbara Andruccioli had any interest of record in the Property at that time.

On October 30, 2016, at 5:15 p.m., a representative of the Treasurer visited the Property and personally served various notices on Janice D'Angelo. Those documents included a Notice of Show Cause Hearing and Judicial Foreclosure Hearing showing the date, time, and place of the Administrative Show Cause Hearing and the Judicial Foreclosure Hearing, as well as the current amount of delinquent taxes on the Property. (Treasurer's Exhibit E). The Treasurer's representative made a record of that visit to the Property in a document entitled "Oakland Forfeiture Notice" and another document

entitled "Affidavit of Personal Services RE: 2017 Land Sale Notice." (Treasurer's Exhibit E).

On December 1, 2016, the Treasurer performed a Lexis-Nevis database search which revealed that Ruth D'Angelo was deceased. (Treasurer's Exhibit F). On December 12, 2016, the Treasurer searched the probate court records which disclosed Barbara Andruccioli, Esq. as the successor Personal Representative for the Estate of Ruth D'Angelo. (Treasurer's Exhibit G). The Treasurer then mailed a copy of the Notice of Administrative Show Cause Hearing and Judicial Foreclosure Hearing, showing the date, time and place of both hearings to Barbara Andruccioli, Esq. at her Kemp Klein law firm pursuant to MCL 211.78i(2). (Treasurer's Exhibit H). This notice was mailed to Ms. Andruccioli at her current law office address, which is the same address Ms. Andruccioli listed on her Letters of Authority. (See Exhibit C of the Estate's Motion). This mailing was not returned as undeliverable. The Notice of Administrative Show Cause Hearing and Judicial Foreclosure Hearing was also mailed to Ruth D'Angelo, Martin D'Angelo, Morris H. Goodman, Janice D'Angelo and Jacquelyn D'Angelo. (Treasurer's Exhibit I). (According to the Register of Actions for the Estate of Ruth D'Angelo, Morris H. Goodman was the attorney of record for the Estate of Ruth D'Angelo). Additionally, the Treasurer published a Notice of Foreclosure of the Property beginning on December 22, 2016 for three consecutive weeks. (Treasurer's Exhibit J).

Based on the aforesaid record, the Court finds that the Treasurer fully complied with all notice requirements of the GPTA and fully comported with all constitutional due process requirements. Here, the notices provided by the Oakland County Treasurer, as detailed above, not only fully complied with all notice requirements of the GPTA, but



were also reasonably calculated to apprise the current occupant and successor Personal Representative Barbara Andruccioli of the tax delinquency and pending foreclosure. Moreover, contrary to the Estate's arguments, the Treasurer was not required to serve the petition on the Estate because the Petition is an in rem action and the GPTA does not require the Treasurer to individually serve the Petition on each property owner. Rather, the GPTA contains its own, exclusive notice provisions. See MCL 211.78 to MCL 211.781.

Furthermore, notwithstanding the Estate's arguments, the Court concludes that it indeed has exclusive jurisdiction over property tax foreclosures. The GPTA grants the circuit court exclusive jurisdiction over property tax matters, including filing of the petition, show cause hearings, objections and redemption. Property tax proceedings may only proceed in the circuit court. MCL 211.78h(1) provides:

Not later than June 15 in each tax year, the foreclosing governmental unit shall file a single petition with the clerk of the circuit court of that county listing all property forfeited and not redeemed to the county treasurer under section 78g to be foreclosed under section 78k for the total of the forfeited unpaid delinquent taxes, interest, penalties, and fees.

The GPTA is exclusive, i.e. no other statute in Michigan governs property tax foreclosures, and Section 78h(1) provides that such petitions shall be filed in the circuit court of that county. Furthermore, it has long been recognized that actions to foreclose tax liens are actions in rem, against the property, and not against the owners or interest-holders. Owners and interest-holders are not defendants to the petition. See *Ball v Ridge Copper Co*, 118 Mich 7, 11 (1989). Accordingly, the Estate's jurisdictional arguments fail because circuit courts are the only courts which can decide property tax foreclosure cases pursuant to the GPTA.

THEREFORE, IT IS HEREBY ORDERED that the Special Fiduciary Joseph H. Ehrlich's Motion to Set Aside Order Entered by the Court on February 8, 2017 is DENIED.

IT IS SO ORDERED.

Dated: 3/8/18

  
Hon. Kala Jarbou  
Circuit Court Judge